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IN THE

Supreme Court of the United States

OCTOBER TERM, 1940.

No. 264.

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

versus

PAN AMERICAN LIFE INSURANCE COMPANY, *Respondent.*

On Petition for a Writ of Certiorari to the United States Circuit Court of Appeals for the Fifth Circuit.

RESPONDENT'S MOTION TO ADVANCE THE WITHIN CAUSE FOR ARGUMENT IN THE EVENT THAT THE PETITION FOR A WRIT OF CERTIORARI HEREIN IS GRANTED.

EUGENE J. MCGIVNEY,
New Orleans, Louisiana,
Counsel for Respondent.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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COMES NOW the respondent, Pan American Life Insurance Company, by its attorney, Eugene J. McGivney, and respectfully moves this Honorable Court to advance the within cause for argument to follow the argument in *New*

World Life Insurance Company v. *U. S.*, No. 2, on November 18, 1940, in the event that this Court should grant the Government's petition for a writ of certiorari herein, and as cause therefor respondent avers as follows:

1. On April 20, 1940 the United States Circuit Court of Appeals for the Fifth Circuit entered judgment in the above-entitled cause in favor of the respondent; and on July 22, 1940 the petitioner filed a petition for a writ of certiorari in this Court, assigning as a reason for granting the writ that the decision below was in direct conflict with the decision of the Court of Claims in *New World Life Insurance Company* v. *U. S.*, 26 Fed. Supp. 444, 460, then pending in this Court on certiorari, No. 2, October Term, 1940. (Pet. 8 and 9.)

2. On September 24, 1940 the Government filed a motion in this Court to dismiss the writ in the *New World Life Insurance Company* case on the ground that the question presented by the writ was moot. On October 7, 1940 respondent filed a motion in this Court for leave to file a brief in opposition to the petition for a writ of certiorari out of time, respondent's objection, however, being contingent only upon this Court's dismissing the writ in the *New World Life Insurance Company* case. On October 14, 1940 this Court granted the respondent's said motion to file a brief in opposition to the granting of the petition for a writ of certiorari herein; and on the same date the Court denied the Government's motion to dismiss the writ in the *New World Life Insurance Company* case.

3. The question involved in the instant case is similar to that presented by the writ in the *New World Life Insurance Company* case; and if this Court should grant the petition for a writ of certiorari herein, this case appropriately

should be heard by this Court following the argument in the *New World Life Insurance Company* case on November 18, 1940.

WHEREFORE, respondent prays that its motion to advance the within cause for argument may be granted in the event that this Court grants the Government's petition for a writ of certiorari herein.

EUGENE J. McGIVNEY,
New Orleans, Louisiana,
Counsel for Respondent.

October, 1940.

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SUPREME COURT OF THE UNITED STATES.

No. 264.—October Term, 1940.

Guy T. Helvering, Commissioner of Internal Revenue, Petitioner,
vs.
Pan-American Life Insurance Company.

Writ of Certiorari to the United States Circuit Court of Appeals for the Fifth Circuit.

[December 9, 1940.]

Mr. Justice Black delivered the opinion of the Court.

This case involves respondent's income tax for the tax year 1933. It is in all respects governed by our decision in *Helvering* v. *Oregon Mutual Life Ins. Co.*, No. 564, this day decided, and on the authority of that case the decision below is

Affirmed.

A true copy.

Test:

Clerk, Supreme Court, U. S.

END